File No. 220/29

19 .

Collection No. VII

Office of the Resident in Mysore Bangalore.

Rev. 24.6.27

Pros. Serial Nos.

Subject.

Central Board of Revenue Circulars

Previous References.	Later References.
F 43/17	
F 38/18	
F 148/25	
F 221/25	
F 336/28	
F 336A/28	
F 338/28	

MGIPC—FP—52DCFMis.—(1783)—27-5-25—39 000.

Routine

Receipt No. 12454

Records section

Please put up the circular referred to at end of para. 9 of the p.u.c.; also if available the ruling of Calcutta High Court referred to in para.1

13.1.30

Circular is put up. The ruling of Calcutta High Court is not available.

18-1-30

D. O. R. Dis. No. 795 (i)-I. T./29.

CENTRAL BOARD OF REVENUE.

New Delhi, the 21st November 1929.

SUBJECT :—*Establishment—Assistant Income-tax Officers—Substitution of, by Examiners of Accounts.*

Your demi-official No. 7952-C. T./Con., dated 21st September 1929, and No. 8948/Con./1-P.-8, dated the 4th October 1929.

MY DEAR STRONG,

* * * *

2. In regard to the legal position, the Government of India consider that there is no difficulty so long as the system is properly worked and the Examiners of Accounts, or Assistant Income-tax Officers are not allowed to exercise functions that properly belong to the Income-tax Officer alone. Examiners must not issue orders and notices should not be issued requiring assessees in so many words to produce accounts before Examiners. It is obligatory on the Income-tax Officer personally to examine books produced under Section 22 (4) or 23 (2). Under Section 23 (3), it is his duty to consider the evidence and make the order of assessment and, therefore, he must examine the books himself. This does not, however, preclude the Income-tax Officer, after the books have been produced before him, from asking his Examiner to examine the books, to prepare such statements, summaries or notes as may be necessary, to draw the Income-tax Officer's attention to relevant entries and specific points. That is to say, the Examiner may do the spade work and report the results to the Income-tax Officer but before the Income-tax Officer makes the order of assessment he must apply his mind to the evidence produced which includes relevant entries in the books produced. I am not aware whether any misapprehension on this point has existed in Bengal. I was under the impression that the system was generally worked on the lines that I have indicated except where, owing to laziness or for any other reason, an individual Income-tax Officer might rely unduly on his Examiner and in effect delegate his own duties to the Examiner.

3. The expression "hear such evidence" in Section 23 (3) includes the examination of the relevant entries in the books produced by the assessee in support of his return.

4. As already indicated, Section 23 (4) does not authorise the Income-tax Officer to make the assessment to the best of his judgment, treating the assessee as having failed to comply with the requirements of the law if the assessee has failed to comply with a notice calling upon him in so many words to produce his books before the Examiner for examination. But if the notice is properly worded so as to require the assessee to produce his books before the Income-tax Officer or at the Income-tax Office (where the Income-tax Officer is at liberty to have them examined by his Examiner), failure to comply with the notice does attract "the provisions of Section 23 (4)".

5. To summarise. The correct procedure is for the Income-tax Officer to call for the books under Section 22 (4) or 23 (2). When the books are left in the office, the Examiner may be directed to examine them and submit a confidential report specifying the relevant entries and the points on which further information or explanation is required. On the appointed day the

Income-tax Officer must himself look into the relevant entries and hear the explanation, if any. He may certainly have the Examiner with him to assist him. After the hearing he himself must pass the order. I myself think that it is desirable for Examiners to draft orders for Income-tax Officers.

6. It appears that both Examiners and also all ministerial officers of the Department are "persons acting in the execution of the Indian Income-tax Act" within the meaning of clause (*b*) of the first proviso to sub-section (2) of Section 54 of the Act, so that a disclosure to such persons is not liable to the mischief of the substantive portion of that section. The law does not enjoin impossibilities. Evidently, an Income-tax Officer cannot himself do the whole work for which his staff of Examiners and clerks is appointed. If it were decided that it was illegal to employ Examiners it would also seem to follow logically that it was illegal to employ clerks. There is a great deal of clerical work in the Income-tax Department in connection with the issue of Demand Notices, the collection of tax, the compilation of statistics and routine correspondence of various kinds which obviously must be performed by clerks who must also necessarily be allowed access to the assessment records in order to perform it.

Yours sincerely,

A. TOTTENHAM.

The 21st November 1929.

To

F. W. Strong, Esq., I. C. S.,
Commissioner of Income-tax, Bengal,
Imperial Secretariat Buildings, Calcutta.

Circular 15 of 1929.
R. Dis. No. 795 (ii)-I. T./29.

Copy of paragraphs 2—6 forwarded to all Commissioners of Income-tax (except Bengal) for information and guidance.

By order etc.,

(Sd.) V. S. SUNDARAM,
Secretary, Central Board of Revenue.

The 21st November 1929.

GIPD—691 CBR—30-11-29—1150

Circular of the Central Board of Revenue, No.17 of 1929, R. Dis No54-I.T./29,d/28-11-29

*Vide Records section's note

The ruling of the Calcutta High Court referred to in para.i of the p.u.c.is n ot* available. As one of the parties to the case was the Commr. of I.T., Bengal, a copy of the ruling and of any connected papers may be obtained from him.

Draft submitted.

25.1.30

25/1.

Issued No.985, dated the 31st Jan. 1930

RESIDENT'S OFFICE
Register No. 12454
Date of Receipt 16/12/29
File No. 220

CIRCULAR No. 17 OF 1929.

R. DIS. No. 54-I. T./29.

CENTRAL BOARD OF REVENUE.

New Delhi, the 28th November 1929.

CIRCULAR.

Indian Income-tax Act (XI of 1922)—Section 5—Income-tax Officers—jurisdiction of—Determination of—Concurrent—jurisdiction barred.

The attention of Commissioners of Income-tax is invited to the ruling of the Calcutta High Court in the case of *Lachhiram Basantlal Basantlal Nathany* versus The *Commissioner of Income-tax, Bengal.*

2. The important point in this decision is that sub-section (4) of section 5 of the Indian Income-tax Act (XI of 1922) contemplates the assignment to Income-tax Officers by the Commissioner of Income-tax not of individual cases transferred from time to time but of cases distinguishable as relating to classes of persons or of income or arising within a certain area. In other words, these cases must have some predetermined inherent characteristic in common, and not be comprised in fortuitous collections the composition of which depends simply on individual acts of the Commissioners' will.

3. It is important that sub-sections (4) and (5) of section 5 should be worked correctly and with great care, and to assist Commissioners in avoiding pitfalls the Board issues the following instructions.

4. The first sentence of sub-section (4) of section 5 simply confers on the Commissioner power to appoint a certain person as Income-tax Officer or Assistant Commissioner. This order must be in writing. The second sentence empowers the Commissioner of Income-tax to determine the jurisdiction of each person appointed as Assistant Commissioner or Income-tax Officer. Such jurisdiction must be determined with reference to some area (which might be the entire province) and may be further limited, if the Commissioner of Income-tax so decides to particular *classes of persons* or *classes of incomes* within that area. As the Act stands, this order need not be in writing, but the Board directs that in practice it should always be in writing. It is obviously desirable, not to say essential, that it should be. The third sentence empowers the Commissioner to transfer jurisdiction over individual cases or specified classes of cases from the Income-tax Officer or Officers concerned to "*the* Assistant Commissioner" (which means the Assistant Commissioner exercising jurisdiction over the area, or class of persons or class of cases concerned, and not *any* Assistant Commissioner) or from the latter to himself.

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7. If the Commissioner considers that any particular case requires special scrutiny one way of securing this is to transfer the case to the "Assistant Commissioner" (see paragraph 4 above) under the third sentence of sub-section (4) of section 5. It would be an abuse of the Commissioner's powers, should he define the area of an Income-tax Officer's jurisdiction to be a particular building, in order to give him jurisdiction in an individual case. If the number of cases requiring special scrutiny in any area is too large to be dealt with conveniently by transfer to the Assistant Commissioner the only thing to do is to split up the work in the area temporarily between two or more Income-tax Officers on the lines indicated above.

8. There is no difficulty as regards Salary circles, Non-resident Refund circles, etc., which are created by notifications issued by the Central Board of Revenue under sub-section (5) of section 4. The creation of such circles automatically ousts the jurisdiction of the Income-tax Officer who would otherwise have jurisdiction.

9. The Act does not confer any power on the Commissioner to transfer an individual case from one Income-tax Officer to another. Still less can the senior Income-tax Officer in charge of a circle transfer a case from himself to another Income-tax Officer or an Assistant Income-tax Officer or Additional Income-tax Officer (duly appointed to be Income-tax Officers within the meaning of the Act) within the same circle or *vice versâ*. In regard to the manner in which an Income-tax Officer should utilize the services of his Assistant Income-tax Officer (not being an Income-tax Officer under the Act), Examiner or Accountant instructions have been issued recently in Board's circular No. $\frac{15 \text{ of } 1929}{\text{R. Dis. No. } 795\text{-I. T./29}}$, dated 21st November 1929.

(D)

Secretary, Central Board of Revenue.

To

All Commissioners of Income-tax.

GIPD—723CBR—10-12-29—1,160.

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(Sd.) V. S. SUNDARAM,
Secretary, Central Board of Revenue.

To

All Commissioners of Income-tax.

GIPD—723CBR—10-12-29—1,160.

CIRCULAR No. 17 OF 1929.

R. DIS. No. 54-I. T./29.

CENTRAL BOARD OF REVENUE.

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CIRCULAR.

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The attention of Commissioners of Income-tax is invited to the ruling of the Calcutta High Court in the case of *Lachhiram Basantlal Basantlal Nathany* versus The *Commissioner of Income-tax, Bengal.*

2. The important point in this decision is that sub-section (4) of section 5 of the Indian Income-tax Act (XI of 1922) contemplates the assignment to Income-tax Officers by the Commissioner of Income-tax not of individual cases transferred from time to time but of cases distinguishable as relating to classes of persons or of income or arising within a certain area. In other words, these cases must have some predetermined inherent characteristic in common, and not be comprised in fortuitous collections the composition of which depends simply on individual acts of the Commissioners' will.

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GIPD—723CBR—10-12-29—1,160.

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5. Evidently—except to the extent provided in section 64, sub-section (4)—two or more Income-tax Officers cannot exercise concurrent jurisdiction in respect of the same assessment. It follows that, if they have concurrent jurisdiction in respect of the same area, each should be assigned jurisdiction in respect of a definite separate class of persons or of incomes within such area. They cannot have concurrent jurisdiction in respect of the *same* class of persons or class of incomes within the same area. Where there are two or more Income-tax Officers with concurrent local jurisdiction, it is not legal to distribute the individual cases between them either by mutual arrangement between the Income-tax Officers or at the discretion of one of them, of the Assistant Commissioner or of the Commissioner.

6. An order appointing one Income-tax Officer to assess all companies within a certain area, and another Income-tax Officer to assess all other persons within the same area, is valid, since companies are a definite "class

of persons ". An order empowering an Income-tax Officer to assess all persons with an estimated income of over Rs. .....would almost certainly not be valid, and such an order should not be issued. What *may* be done to secure the same result is to empower an Income-tax Officer to assess all persons whose income *at the assessment in the previous year* was found to exceed a certain sum, or not to exceed it, as the case may be. Of course, there is nothing to prevent several Income-tax Officers sharing a common office or a common establishment of any kind.

7. If the Commissioner considers that any particular case requires special scrutiny one way of securing this is to transfer the case to the "Assistant Commissioner" (see paragraph 4 above) under the third sentence of sub-section (4) of section 5. It would be an abuse of the Commissioners' powers, should he define the area of an Income-tax Officer's jurisdiction to be a particular building, in order to give him jurisdiction in an individual case. If the number of cases requiring special scrutiny in any area is too large to be dealt with conveniently by transfer to the Assistant Commissioner the only thing to do is to split up the work in the area temporarily between two or more Income-tax Officers on the lines indicated above.

8. There is no difficulty as regards Salary circles, Non-resident Refund circles, etc., which are created by notifications issued by the Central Board of Revenue under sub-section (5) of section 4. The creation of such circles automatically ousts the jurisdiction of the Income-tax Officer who would otherwise have jurisdiction.

9. The Act does not confer any power on the Commissioner to transfer an individual case from one Income-tax Officer to another. Still less can the senior Income-tax Officer in charge of a circle transfer a case from himself to another Income-tax Officer or an Assistant Income-tax Officer or Additional Income-tax Officer (duly appointed to be Income-tax Officers within the meaning of the Act) within the same circle or *vice versâ*. In regard to the manner in which an Income-tax Officer should utilize the services of his Assistant Income-tax Officer (not being an Income-tax Officer under the Act), Examiner or Accountant instructions have been issued recently in Board's circular No. $\frac{15 \text{ of } 1929}{\text{R. Dis. No. } 795\text{-I. T./}29}$, dated 21st November 1929.

(Sd.) V. S. SUNDARAM,
Secretary, Central Board of Revenue.

To

All Commissioners of Income-tax.

GIPD—723CBR—10-12-29—1,160.

CIRCULAR No. 17 OF 1929.

R. DIS. No. 54-I. T./29.

CENTRAL BOARD OF REVENUE.

New Delhi, the 28th November 1929.

CIRCULAR.

Indian Income-tax Act (XI of 1922)—Section 5—Income-tax Officers—jurisdiction of—Determination of—Concurrent—jurisdiction barred.

The attention of Commissioners of Income-tax is invited to the ruling of the Calcutta High Court in the case of *Lachhiram Basantlal Basantlal Nathany* versus The *Commissioner of Income-tax, Bengal.*

2. The important point in this decision is that sub-section (4) of section 5 of the Indian Income-tax Act (XI of 1922) contemplates the assignment to Income-tax Officers by the Commissioner of Income-tax not of individual cases transferred from time to time but of cases distinguishable as relating to classes of persons or of income or arising within a certain area. In other words, these cases must have some predetermined inherent characteristic in common, and not be comprised in fortuitous collections the composition of which depends simply on individual acts of the Commissioners' will.

3. It is important that sub-sections (4) and (5) of section 5 should be worked correctly and with great care, and to assist Commissioners in avoiding pitfalls the Board issues the following instructions.

4. The first sentence of sub-section (4) of section 5 simply confers on the Commissioner power to appoint a certain person as Income-tax Officer or Assistant Commissioner. This order must be in writing. The second sentence empowers the Commissioner of Income-tax to determine the jurisdiction of each person appointed as Assistant Commissioner or Income-tax Officer. Such jurisdiction must be determined with reference to some are a (which might be the entire province) and may be further limited, if the Commissioner of Income-tax so decides to particular *classses of persons* or *classes of incomes* within that area. As the Act stands, this order need not be in writing, but the Board directs that in practice it should always be in writing. It is obviously desirable, not to say essential, that it should be. The third sentence empowers the Commissioner to transfer jurisdiction over individual cases or specified classes of cases from the Income-tax Officer or Officers concerned to "*the* Assistant Commissioner" (which means the Assistant Commissioner exercising jurisdiction over the area, or class of persons or class of cases concerned, and not *any* Assistant Commissioner) or from the latter to himself.

5. Evidently—except to the extent provided in section 64, sub-section (4)—two or more Income-tax Officers cannot exercise concurrent jurisdiction in respect of the same assessment. It follows that, if they have concurrent jurisdiction in respect of the same area, each should be assigned jurisdiction in respect of a definite separate class of persons or of incomes within such area. They cannot have concurrent jurisdiction in respect of the *same* class of persons or class of incomes within the same area. Where there are two or more Income-tax Officers with concurrent local jurisdiction, it is not legal to distribute the individual cases between them either by mutual arrangement between the Income-tax Officers or at the discretion of one of them, of the Assistant Commissioner or of the Commissioner.

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(Sd.) V. S. SUNDARAM,

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To

All Commissioners of Income-tax.

GIPD—723CBR—10-12-29—1,160.

6

CIRCULAR No. 17 OF 1929.

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No. 985
31.1.30

From

Secretary to the Resident
&
Commr. of Income-tax,
C & M Station,
Bangalore

To

The Commissioner of Income-tax,
Bengal

Sir,

I have the honour to request that I may be favoured with a copy of the ruling ~~xxxx